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March 29, 2010

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 9, 2009

Case Number: TSO-0848

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization 1/ under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be granted.

I. Background

The individual is an applicant for a DOE access authorization. In June 2009, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address the individual's alcohol use. In addition to the PSI, the LSO requested the individual's medical records and recommended a psychological evaluation of the individual by a DOE consultant psychologist (DOE psychologist). The DOE psychologist concluded that the individual presents a history of Major Depression, recurrent, as well as Alcohol Abuse. The DOE psychologist further concluded that the individual's mental illness causes or may cause a significant defect in his judgment and reliability.

In October 2009, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory

1/ Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a).

information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (hereinafter referred to as Criteria H and J respectively). 2/

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the DOE Counsel called one witness, the DOE psychologist. The individual presented the testimony of three witnesses - a co-worker, a supervisor, and his father. He also testified on his own behalf. The DOE and the individual submitted a number of written exhibits prior to and during the hearing.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all

2/ Criterion H relates to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion J relates to information that a person has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As stated above, the LSO cites two criteria as bases for denying the individual's security clearance, Criteria H and J. To support Criterion H, the LSO relies on the DOE psychologist's report that the individual, according to his history, would be "credibly diagnosed with Major Depression, recurrent." DOE Exh. 6. The DOE psychologist further stated that the individual's judgment and reliability are both compromised by his Major Depression, as well as his Alcohol Abuse. To support Criterion J in this case, the LSO relies on the following information: (i) the individual was arrested and charged with Driving Under the Influence (DUI) in 2006 and, as a result, was ordered to attend alcohol awareness classes, (ii) the individual admitted to consuming alcohol in excess in the past during significantly stressful periods, and (iii) in December 2007, the individual took multiple over-the-counter sleeping pills with alcohol and passed out or hallucinated.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's mental health under Criterion H and his alcohol use under Criterion J. The security concerns associated with Criteria H and J are as follows. First, a mental condition such as Alcohol Abuse can impair a person's judgment, reliability and trustworthiness. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House. Second, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G.

IV. Findings of Fact

The relevant facts in this case are uncontested. The individual has a history of excessive alcohol use. He began drinking beer in high school around the age 18 and increased his alcohol consumption in college, consuming anywhere from two to ten beers in a sitting, several times a month. DOE Exh. 6. The individual acknowledges that he would drink to intoxication on many occasions. He also acknowledges that his drinking substantially increased as the result of stressful events that occurred in his life, including a relationship with a co-worker and a pending divorce. *Id.*

In 2005, the individual was diagnosed with depression by his family physician and was prescribed both Xanax, an anti-anxiety medication, and Zoloft, an anti-depressant. *Id.* However, he acknowledges that he did not take the medication with any regularity. *Id.* The individual further acknowledges that he has mixed Xanax with alcohol in the past during stressful times in order to feel calm. In June 2006, the individual was charged and arrested with DUI. *Id.* According to the individual, he was drinking alcohol at home with a friend and decided to drive to a store to buy more alcohol. *Id.* He was subsequently pulled over and asked to take a breathalyzer test which measured

.2. As a result of the individual's arrest, he was ordered to attend alcohol awareness classes. In July 2006, the individual was referred to the Employee Assistance Program (EAP). However, the individual admits that he did not cease drinking at that time and continued to drink two to three beers per week. *Id.* In December 2007, the individual took multiple over-the-counter sleeping pills with beer and passed out. The individual was hospitalized for several days and participated in a psychiatric consultation but was not hospitalized or referred to counseling or treatment. According to the individual, he had two other incidences where he took sleeping pills with alcohol and experienced hallucinations. *Id.*

The LSO referred the individual to a DOE psychologist in June 2009 for evaluation. After examining the individual, the DOE psychologist concluded that the individual has minimized and denied his problems, attributing "his history of poor judgment and shortfalls of reliability to his previous circumstances." DOE Exh. 2. The DOE psychologist further concluded that the individual, according to his history, has been credibly diagnosed with Major Depression, recurrent as well as Alcohol Abuse. He opined that the individual's judgment and reliability are both compromised by his Major Depression and Alcohol Abuse, and "without his honest appreciation of these issues and some expression of self-responsibility for them, [the individual] is not treatable and his judgment and reliability remain defective." *Id.*

V. Analysis

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c). 3/ After due deliberation, I have determined that the individual's access authorization should be granted. I find that granting the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. The Diagnosis of Major Depression and Alcohol Abuse - Criteria H and J

1. The Individual's Testimony

At the hearing, the individual stated that he began drinking socially while in college and denied drinking to intoxication at that time. Transcript of Hearing (Tr.) at 70. He stated that he began drinking more around 2002 during a bad marriage and that this drinking increased at the time of his divorce in 2004. *Id.* The individual testified that it was around this time that he experienced several

3/ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

stressful events. He testified that after his wife moved out of their home, she stopped allowing him to see his daughter for about two or three months. *Id.* at 71. The individual also acknowledged that he began having a relationship with a co-worker at this time. He explained that once his employer's contract changed, he became the co-worker's supervisor and the relationship continued. *Id.* at 72. The individual further testified that the relationship soured after taking a trip together. *Id.* at 73. According to the individual, the relationship quickly changed from a boyfriend/girlfriend relationship into a situation in which the co-worker alleged sexual harassment. *Id.* The individual testified that he was placed in a position at work where he could either be fired or he could resign. He stated further that he officially resigned from his employment. *Id.* The individual testified that in the course of an eight-month time frame he commenced a divorce proceeding, lost the ability to see his daughter, experienced another relationship break-up, lost a job and lost his license from having been arrested for DUI. *Id.* at 74. He stated that all of these stressors contributed to his drinking and depression. *Id.*

The individual acknowledged that during this stressful period of time, from 2005 to 2007, he made mistakes and did not deal with the stressors in his life in an appropriate manner. *Id.* at 75. He testified that he stopped drinking to the point of intoxication in December 2008 and only drank socially approximately six times in 2008. *Id.* at 78. He stated that he does not drink and drive. The individual added that he began changing his drinking habits in December 2007 after he passed out from taking medication with alcohol and considered that incident to be his wake-up call. *Id.* at 80. He testified that he has not taken medication with alcohol since then. *Id.* The individual reiterated that he realized that he needed to change his lifestyle after this incident and the consequences that followed it, including missing Christmas with his daughter that year. *Id.* at 83. He testified that he now attends church regularly and spends more time with his family. *Id.* at 84 and 86. Finally, the individual testified that he last drank socially, a few beers, about three months ago at a concert with his current girlfriend.

During the hearing, the individual also offered the testimony of three witnesses to corroborate his testimony: a co-worker, a supervisor and his father. The individual's co-worker testified that he has known the individual since 1998 and has counseled him and encouraged him to attend church. *Id.* at 41. He believes the individual's mental state has improved significantly and that he is caring, compassionate and honest. *Id.* at 47. The co-worker further testified that he has never witnessed the individual consuming alcohol. Likewise, the individual's supervisor testified that he has never had any questions regarding the individual's judgment and has never observed the individual consuming alcohol or noticed any other signs of alcohol consumption. *Id.* at 38. The individual's father testified that he has noticed a significant change in the individual since his divorce and testified that the individual is a very responsible father. *Id.* at 10. He further testified that he has not seen any signs of alcohol abuse and stated that while in the last year the individual has been confronted with obstacles in his life, i.e. financial concerns, he has not reached for alcohol as a "crutch." *Id.* at 18.

2. The DOE Psychologist's Testimony and Report

The DOE psychologist stated in his Psychological Report that the individual has been credibly diagnosed in the past with Major Depression, recurrent and Alcohol Abuse. DOE Exh. 6. He stated

that the individual has demonstrated a history of “egregiously poor judgment” and has minimized and denied his problems. *Id.* at 5. The DOE psychologist further opined that these diagnoses would require an intensive outpatient program which focused on working through the minimization and denial. He added that the individual’s illnesses causes a significant defect in his judgment and reliability. After listening to the testimony of all of the witnesses in this case, the DOE psychologist testified that there is no question going forward that the individual does not have any major psychiatric problems. *Tr.* at 116. He testified that most of the individual’s issues surrounded his alcohol use, reliability and trustworthiness and further that the individual’s witnesses have demonstrated that the individual has undergone a great deal of maturity and growth. *Id.* at 117. Although the DOE psychologist believes the individual is still vulnerable, he acknowledged that the vulnerability of isolation, drug/alcohol abuse and inappropriate relations were addressed during the hearing. *Id.* at 118. He further testified that the individual’s Alcohol Abuse is in remission based on the fact that it has been two years since any inappropriate alcohol use. *Id.* Likewise, he stated that since there was testimonial evidence that the individual is responsible, even-tempered and industrious, he did not believe Major Depression would be a current diagnosis for the individual. *Id.* Finally, the DOE psychologist testified that he no longer believes that the individual’s judgment and reliability are defective. *Id.* at 126.

3. Hearing Officer’s Evaluation of the Evidence

In the administrative process, Hearing Officers accord deference to the expert opinions of psychiatrist and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing*, Case No. TSO-0728 (2009). ^{4/} Regarding rehabilitation, I gave considerable weight to the opinion of the DOE psychologist, who opined that the individual’s Alcohol Abuse is in remission and he no longer possesses a diagnosis of Major Depression. Moreover, from a common-sense perspective, the following factors weigh in favor of granting the individual’s access authorization. During the hearing, the individual credibly testified that his lifestyle has changed, he now has the tools to deal with significant life stressors and he no longer used alcohol as a “crutch.” In addition, the individual acknowledges his past issues of alcohol abuse and has established a pattern of responsible use. *See* Adjudicative Guideline G at 23(b). In addition, the individual’s past alcohol abuse and alcohol-related incidents occurred under a series of unusual and significantly stressful circumstances, i.e., pending divorce issues, lost of a job and break-up of a relationship, that are unlikely to recur and do not cast doubt on the individual’s current reliability, trustworthiness, or good judgment. *Id.* at 23(a). Again, I am convinced that the individual’s current lifestyle changes, which include regular attendance at church and frequent communication with friends and family, will allow him to handle future stressful events in a more appropriate manner. Based on the foregoing, I am persuaded by the DOE psychologist’s opinion that the individual’s Alcohol Abuse is in remission, that he no longer possesses a current diagnosis of Major Depression and that he no longer has defective judgment and reliability. Therefore, I find that the individual has provided adequate evidence to mitigate the security concerns under Criteria H and J.

^{4/} Decisions issued by OHA are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H and J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the individual has brought forth convincing evidence to mitigate the security concerns associated with Criteria H and J. I therefore find that granting the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: March 29, 2010